

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Case No 1:06CR88

RENE Y. SWEET,

Defendant.

**REPORT AND RECOMMENDATION CONCERNING  
DEFENDANT'S MOTION TO DISMISS**

Defendant Rene Y. Sweet is charged in an 85-count Indictment with submitting false claims to the government, in violation of 18 U.S.C. §287. On October 2, 2006, Defendant, through counsel, submitted her "Motion to Dismiss the Indictment for Failure to State an Offense" [Docket Entry 9]. The motion was referred to the undersigned United States Magistrate Judge by Chief United States District Judge Irene M. Keeley on October 4, 2006 [Docket Entry 10]. On October 12, 2006, the government, through counsel, submitted its "Response to Defendant's Motion to Dismiss the Indictment for Failure to State an Offense" [Docket Entry 11].

In its Response, the government states it has no objection to Defendant's Motion to Dismiss the Indictment for Failure to State an Offense for the reasons set forth in Defendant's Motion. The government requests that the dismissal be without prejudice, and states that the government intends to proceed with prosecution under a different federal statute.

The undersigned United States Magistrate Judge **RECOMMENDS** "Defendant's Motion to Dismiss the Indictment for Failure to State an Offense" [Docket Entry 9] be **GRANTED**, and the Indictment be **DISMISSED WITHOUT PREJUDICE**.

Any party may, within ten (10) days after being served with a copy of this Report and

Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Irene M. Keeley, Chief United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such report and recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

For reasons apparent to the Court, the hearing scheduled before the undersigned on Tuesday, October 17, 2006, at 10:00 a.m. is **CANCELLED**.

The Clerk of the Court is directed to send a copy of this Report and Recommendation to counsel of record.

Respectfully submitted this 13<sup>th</sup> day of October, 2006.

/s/ *John S. Kaull*

JOHN S. KAULL  
UNITED STATES MAGISTRATE JUDGE